

Hearing:
September 2, 1999

Paper No. 17
EWH/cjohnson

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 30, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Alchem Capital Corporation
v.
Golf Duck Products Corporation

Opposition No. 104,507
to application Serial No. 75/075,159
filed on March 19, 1996

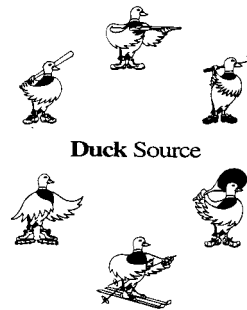
Warren E. Olsen of Fitzpatrick, Cella, Harper & Scinto for
Alchem Capital Corporation

Michael Greenbaum of Wigman, Cohen, Leitner & Myers, P.C.
for Golf Duck Products Corporation

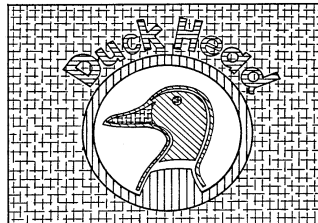
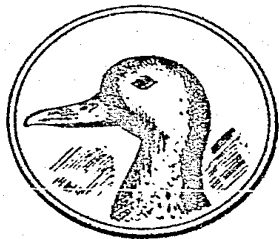
Before Cissel, Hanak and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Golf Duck Products Corporation (applicant) seeks to
register DUCK SOURCE and design in the form shown below for
"sportswear: namely, jackets, pants, shirts, shorts, rain
suits and hats." The intent-to-use application was filed on
March 19, 1996.



Alchem Capital Corporation (opposer) filed a notice of opposition alleging that long prior to March 19, 1996, it both used and registered the following three marks (amongst others) for goods which, in part, are identical to certain of the goods for which applicant seeks registration: (1) the word mark DUCK HEAD (Registration No. 817,443); (2) the depiction of a duck head within a circle as shown below at the left (Registration No. 53,255); and (3) the combination mark shown below at the right (Registration No. 1,468,429). Continuing, opposer alleged that the contemporaneous use of applicant's mark and opposer's marks is likely to result in confusion.



Applicant filed an answer which denied the pertinent allegations of the notice of opposition. Opposer made of record evidence, including certified status and title copies of its registrations for the above three marks as well as the deposition of Judith A. Kaminsky, (opposer's associate director of licensing). Applicant made of record no evidence. Opposer filed a brief. Applicant did not. A hearing was held on September 2, 1999 at which counsel for opposer was present but counsel for applicant was absent.

Priority is not an issue in this proceeding because opposer has properly made of record certified status and title copies of the three registrations previously mentioned. Moreover, the record demonstrates that opposer has made continuous use of its duck head design mark (Registration No. 53,255) since 1865, and that opposer has made continuous use of its word mark DUCK HEAD since 1924. Indeed, Ms. Kaminsky testified that opposer's DUCK HEAD design mark is the oldest, continuously used mark in the apparel industry. (Kaminsky deposition page 55).

In any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("the fundamental inquiry mandated by Section 2(d) goes to

the cumulative effect of differences in the essential characteristics of the goods and differences in the mark").

Considering first the goods of the parties, they are, in part, identical. Opposer's registrations for the duck head design and the word mark DUCK HEAD both encompass coats and trousers, which, despite differences in terminology, are essentially identical to certain of applicant's goods, namely, jackets and pants. Moreover, opposer's registration for the composite mark consisting of the design of a duck head and the words DUCK HEAD specifically encompass pants and shirts, goods which are identical to certain of applicant's goods, namely, pants and shirts. Moreover, the record reflects that for many years preceding March 19, 1996, opposer's primary line of apparel has been sportswear. In this regard, opposer has promoted its sportswear to golfers, baseball players and others interested in active lifestyles. Of course, applicant's goods are particular types of sportswear.

Turning to a consideration of the marks, note at the outset that when the goods of the parties are identical, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). In addition, we find that through long use, opposer's marks have become

famous for apparel, thus are entitled to a very broad scope of protection. Cantor Parker Toys Inc. v. Rose Art Industries Inc., 963 F.2d, 350, 222 USPQ2d 1453, 1456 (Fed. Cir. 1992). Indeed, opposer's broad scope of protection is further extended because as applied to apparel, its marks are totally arbitrary. Opposer's apparel, and for that matter, applicant's apparel is described in its application, have nothing whatsoever to do with ducks. Indeed, there is absolutely nothing in the record to indicate that any other manufacturer of apparel has used as a mark any depiction of a duck or any mark containing the word DUCK.

Given the fact that opposer's marks are famous and are totally arbitrary and unique when applied to apparel, we find that should applicant use its mark on identical goods, there would be a likelihood of confusion. Both opposer's composite mark and applicant's mark feature the word DUCK and the depiction of a duck or ducks. Moreover, for many years, opposer has actively promoted its sportswear to golfers, baseball players and others who have enjoyed active lifestyles. Obviously, applicant's mark features ducks engaged in golf, baseball and other sporting activities. Consequently, we firmly believe that if applicant's mark were used on sportswear, a significant number of consumers would assume that said sportswear originated from opposer.

Decision: The opposition is sustained.

R. F. Cissel

E. W. Hanak

G. F. Rogers
Administrative Trademark
Judges, Trademark Trial
and Appeal Board